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EN BANC

[G.R. Nos. 127756-58. June 18, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BENJAMIN MEDINA, SR.** *y* **PALANCIO,** *appellant.*

SYNOPSIS

Appellant was found guilty of four counts of rape and meted the penalty of death. Hence, this automatic review.

Appellant assailed the decision of the trial court alleging partiality of the judge for participating in the examination of the prosecution witnesses. The Court ruled on the right and duty of the judge to ask questions to elicit relevant facts and to make the records bear the truth. Appellant also averred that he was deprived of his right to be informed of the charges against him in Criminal Cases 1099 and 7100 as the complaints filed therein did not state the precise dates when the crimes were committed by him. The Court ruled that the same did not render the complaints defective as the precise date of the commission of rape is not an essential element of the crime. That the crimes charged were committed in 1990 and 1994 was sufficient compliance with the requirements of the law. Nevertheless, appellant was guilty only of four counts of simple rape punishable by *reclusion perpetua* for each count. The victim's relationship to appellant was not alleged and proved concurrently to warrant the death penalty.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL JUDGE MAY ASK QUESTIONS TO ELICIT RELEVANT FACTS.**— The trial judge in this jurisdiction are judges of both the law and the facts. The judge has the right, nay the duty, to ask questions to elicit relevant facts and to make the records bear the truth. He is not a mere figurehead or an umpire in a trial and it is his duty to see that justice is done. He cannot be expected to remain always passive and stoic during the proceedings. Being the arbiter, the judge may properly intervene in the presentation of evidence to expedite the progress of the

Supreme Court E-Library

trial and prevent unnecessary waste of time. The trial judge may even be considered negligent in the performance of his duties if he permits a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material facts upon which the judgment in the case should turn. In an effort to ascertain the truth, a judge may examine or cross-examine a witness by leading questions. He may even seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party. Questions designed to clarify points and to elicit additional relevant evidence are not improper.

2. **ID.; ID.; ID.; LIMITATION.**— The extent to which the trial judge may intervene in the presentation of evidence must largely be a matter of discretion, to be determined by the circumstances of each particular case. But the interrogatory must be such as not to intimate or express an opinion as to the truth of the case or the merits of the contentions of either of the parties. An intimation of opinion by question is as repugnant as a direct statement of opinion. The judge must remember that he is as much judge on behalf of the accused whose liberty is in jeopardy, as he is judge in behalf of the State for the purpose of safeguarding the interest of a society.

3. **ID.; ID.; ID.; WHERE QUESTIONS CALL FOR INDEPENDENTLY RELEVANT STATEMENTS; CASE AT BAR.**— The questions of the trial judge do not call for hearsay evidence. The purpose of the trial judge in propounding questions to the doctor was to elicit informations relayed to her by the private complainant as the bases for the physical examination and not to prove the truth of the said informations. In other words, the questions call for independently relevant statements. The trial judge had the right to require the doctor to give her expert opinion upon the matter subject of her testimony and in relation to her report on her examination of the private complainant. The opinion of the doctor was important, although not conclusive on the trial judge in the resolution of the primordial issue before him – whether or not the private complainant was raped on August 3, 1996 two times as claimed by her on direct examination.

4. **ID.; ID.; PROSECUTION OF OFFENSES; DATE OF COMMISSION OF THE OFFENSE, NOT ESSENTIAL ELEMENT IN RAPE.**— Section 11, Rule 110 of the Revised

Supreme Court E-Library

Rules of Criminal Procedure reads . . . The precise date of the commission of rape is not an essential element of said crime. Failure to specify the exact dates when the rapes were committed does not render the complaints defective.

5. **CRIMINAL LAW; RAPE; NOT NEGATED BY LACK OF FRESH LACERATIONS IN THE HYMEN.**— Case law has it that a freshly lacerated hymen is not an essential element of rape. Mere touching, no matter how slight, of the *labia* or lips of the female organ by the male genital even without rapture or laceration of the hymen is sufficient to consummate rape.

6. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN RAPE CASES.**— In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of evidence of the defense. Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of the complainant's testimony.

7. **ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.**— The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. There is nothing in the records that would impel this Court to deviate from the said findings and conclusion of the trial court. Indeed, the private complainant testified in a categorical, straightforward and consistent manner. Her testimony, bearing badges of truth, is sufficient to establish the appellant's guilt for the crimes charged.

Supreme Court E-Library

8. **ID.; ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES.**— The appellant's bare denial of the crimes charged is inherently weak. It cannot prevail over the positive, candid and categorical testimony of the private complainant, whose credibility was upheld by the trial court. Between the positive declarations of the prosecution witnesses and the negative statements of the appellant, the former deserves more credence. Denials must be buttressed by strong evidence of non-culpability. There is none in the case at bar.

9. **ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM AND HER MOTHER, UPHELD IN THE ABSENCE OF ILL MOTIVE.**— A young girl on the verge of womanhood would not concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble and inconvenience, not to mention the trauma of a public trial, unless she was in fact raped. Further, it is unnatural for a mother to use her offspring as an instrument of malice, even for the purpose of avenging a personal slight, especially if it will subject her daughter to the embarrassment and stigma attendant to a rape trial. The appellant has failed to show any ill or dubious motive on the part of the private complainant and her mother to impute such grave crimes upon him. The revelation of the private complainant could have been borne only by her desire to obtain justice for the wrongs committed by the appellant against her.

10. **CRIMINAL LAW; RAPE; PROPER PENALTY AT THE TIME OF COMMISSION OF THE CRIME IS *RECLUSION PERPETUA*; DISTINGUISHED FROM LIFE IMPRISONMENT.**— When the appellant raped the private complainant in 1990, the prescribed penalty for the crime of Rape under Article 335 of the Revised Penal Code was *reclusion perpetua*. The proper penalty imposable on the appellant in Criminal Case No. 7099 is *reclusion perpetua*, not life imprisonment. It bears reiterating that *reclusion perpetua* and life imprisonment are not synonymous penalties. They are distinct in nature, in duration and in accessory penalties. The Court distinguished the two penalties in this wise: The Code (Revised Penal Code) does not prescribe the penalty of "life imprisonment" for any of the felonies therein defined that penalty being invariably imposed for serious offenses penalized not by the. . . Code but by the special law. *Reclusion perpetua* entails imprisonment for at least (30) years, after which the convict becomes eligible

Supreme Court E-Library

for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, *etc.* It is not the same as "life imprisonment" which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration.

11. **ID.; RAPE; DEATH PENALTY; WHEN PROPER.**— When the appellant raped the private complainant some time in 1994, and twice on August 3, 1996, Article 335 of the Revised Penal Code had already been amended by Republic Act No. 7659, the law which re-imposed the death penalty for certain heinous crimes. Article 335, as amended by Section 11 of Rep. Act No. 7659, provides in part: The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances: (1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. To warrant the imposition of the death penalty, the minority of the victim and her relationship with the accused must be both alleged and proved.

12. **ID.; ID.; ID.; NOT PROPER WHERE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP NOT ALLEGED AND PROVED CONCURRENTLY.**— Although the minority of the private complainant had been established by the prosecution, her relationship to the appellant was not alleged and proved concurrently. The complaints in Criminal Cases Nos. 7100, 7101 and 7062 uniformly allege that the appellant is the "stepfather" of the private complainant. However, this allegation was not proven during the trial, as the evidence adduced therein shows that the appellant is merely the common-law spouse of Virginia, the mother of the private complainant. Virginia and the appellant were never legally married to each other; hence, the appellant could not be considered the private complainant's "stepfather." On the other hand, while it was indeed proven that the appellant was the common-law husband of the victim's mother, the same was not alleged in the criminal complaints. Given the discrepancy between the allegation of the nature of the relationship between the appellant and the victim in the criminal complaints and what was proven during the trial, the appellant can only be found guilty of simple rape. Consequently, the penalties imposed in Criminal Cases Nos. 7100, 7101 and

Supreme Court E-Library

7062 shall be reduced to *reclusion perpetua* for each count of simple rape.

13. **ID.; ID.; PROPER CIVIL PENALTIES.**— Under prevailing jurisprudence, when the commission of rape is not qualified by any of the circumstances under which the death penalty is to be imposed, the victim shall be awarded civil indemnity in the amount of ₱50,000. Civil indemnity is separate and distinct from moral damages. In this case, the private complainant shall be awarded ₱50,000 as civil indemnity for each count of rape. In addition, the award of ₱50,000 as moral damages for each count is warranted, as the same is awarded in rape cases without need of pleading or proof for it is assumed that the victim has suffered moral injuries entitling her to such an award. Lastly, the appellant should be made to pay exemplary damages in the amount of ₱25,000 for each count, to deter others similarly minded from sexually abusing the children of their common-law spouses.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Angelito G. Adriano for appellant.

D E C I S I O N

CALLEJO, SR., *J.*:

Before this Court on automatic review is the Decision[1] of the Regional Trial Court of Cabanatuan City, Branch 27, finding appellant Benjamin Medina, Sr. *y* Palancio guilty beyond reasonable doubt of four counts of rape and imposing upon him the supreme penalty of triple death[2] and life imprisonment.[3]

The appellant was charged with four counts of rape upon the sworn complaint of the victim Ma. Theresa Salvatierra which respectively read:

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[1] Penned by Judge Feliciano V. Buenaventura.

[2] In Criminal Cases Nos. 7062, 7100 and 7101.

[3] In Criminal Case No. 7099.

Supreme Court E-Library

Criminal Case No. 7062

That on or about the 3rd day of August 1996, in the morning, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully, and feloniously have carnal knowledge of Ma. Theresa Salvatierra *y* Basa, who is above twelve years old but under 18 years of age, and the accused is the stepfather of the complainant, to the latter's damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 7099

That sometime in the year 1990, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully, and feloniously have carnal knowledge of Ma. Theresa Salvatierra *y* Basa, the girl then being six (6) years old and the accused is the stepfather of the complainant, to the latter's damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 7100

That sometime in the year 1994, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully, and feloniously have carnal knowledge of Ma. Theresa Salvatierra *y* Basa, the girl then being ten (10) years old and the accused is the stepfather of the complainant, to the latter's damage and prejudice.

CONTRARY TO LAW.

Criminal Case No. 7101

That on or about the 3rd day of August 1996, in the evening, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above named accused, motivated by lewd design and by means of force and intimidation, did then and there, wilfully, unlawfully, and feloniously have carnal knowledge of Ma. Theresa Salvatierra *y* Basa, who is above twelve

Supreme Court E-Library

years old but under 18 years of age, and the accused is the stepfather of the complainant, to the latter's damage and prejudice.

CONTRARY TO LAW.

At the arraignment on September 18, 1996, the appellant, with the assistance of counsel, pleaded not guilty to each charge of rape.[4] The four criminal cases were thereafter jointly tried.

The Evidence of the Prosecution[5]

The Spouses Cornelio Salvatierra and Virginia M. Basa had three children, namely: Ma. Theresa, born on March 22, 1983,[6] Shiela and Pajek. For some reason, the marriage failed and the couple decided to live separately. By March 1990, Virginia and the appellant began living together as husband and wife. The appellant was then about twenty years old. Virginia's children by her husband also stayed with them in the farm of De Belen at Barangay Patallac, Cabanatuan City. Ma. Theresa could no longer remember her biological father and regarded the appellant as her *tatay*.

Shortly thereafter, still in 1990, the appellant asked Ma. Theresa to accompany him to catch fish in a creek at the De Belen farm by means of *pante*. It was then noontime. She agreed. While they were preparing the *pante*, the appellant suddenly embraced her. Frightened, Ma. Theresa fled, but the appellant caught up with her. He led her to a grassy place and undressed her. He then removed his short pants and briefs and laid on top of her. He held both her hands and inserted his penis into her vagina. She felt excruciating pain. Completely helpless, Ma. Theresa cried. After satiating his lust, the appellant dismounted. He threatened to kill her, including her mother and sister, if she told them about what he did to her. Cowed by the appellant's threat, Ma. Theresa kept the harrowing incident to herself.

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[4] Records, pp. 14-16.

[5] The prosecution presented Ma. Theresa Salvatierra, Virginia Basa Salvatierra and Dr. Ma. Lorraine de Guzman as its witnesses.

[6] Exhibit "G", Records, p. 30.

Supreme Court E-Library

By 1994, the appellant, Virginia and her children had by then transferred their residence to Manoy Taba, Barangay Patallac. One day, at around noontime, Ma. Theresa was left alone in the house with the appellant. He had earlier sent away her younger sister Shiela on an errand to buy cigarettes. Ma. Theresa was outside the house when the appellant summoned her inside, and asked her to help him squeeze the pimple on his back. Ma. Theresa dutifully did as told. Forthwith, the appellant took hold of Ma. Theresa's hands, pulled her and forced her to lie down on the wooden bed. She resisted, but the appellant was too strong for her. He removed her dress and undressed himself. The appellant then laid on top of her and inserted his penis into her sexual organ. Ma. Theresa again felt pain. After a few minutes, the appellant dismounted. The appellant once more threatened to kill her and her family if she told them what he had done to her. Ma. Theresa kept the ordeal to herself because of the appellant's threat.

In 1996, the appellant and Virginia had transferred their residence to Paloc, Sta. Arcadia, Cabanatuan City. At around noontime of August 3, 1996, the appellant and Ma. Theresa were left alone in the house. Virginia was out selling fish, while Shiela was again sent out on an errand by the appellant. Ma. Theresa was in the kitchen when the appellant suddenly grabbed her arms. He then pulled her to the bedroom and made her lie down on the wooden bed. She put up a struggle, but the appellant held her hands, pinned down her legs and then laid on top of her. The appellant removed her clothes and undressed himself. He then inserted his penis into her vagina. Again, Ma. Theresa felt pain on her sexual organ. After several minutes, he dismounted. He warned Ma. Theresa anew against reporting the matter to her mother. But he told her that after the harvest, he would bring her to Mindoro.

Later that evening, Ma. Theresa was sleeping with Shiela, when she was suddenly awakened by the appellant. When she stood up, the appellant grabbed and pulled her towards the other unoccupied wooden bed. He undressed Ma. Theresa and laid on top of her. Ma. Theresa again tried to free herself, to no

Supreme Court E-Library

avail. After unclothing himself, he forcibly inserted his penis into her vagina.

On August 6, 1996, Virginia was doing laundry when Shiela told her that the appellant had a nickname for Ma. Theresa. She told her mother that the appellant called Ma. Theresa *Tamis* because her private part was sweet. Virginia was incensed, and asked Shiela where she and Ma. Theresa slept on August 3, 1996, when Virginia was not in the house. Shiela replied that Ma. Theresa slept beside the appellant. Virginia then asked Ma. Theresa if the appellant did anything to her. Ma. Theresa became hysterical and tearfully embraced her mother. She was trembling as she told her mother that the appellant would kill them if she said anything. Virginia assured her daughter that they would soon leave the appellant. It was only then that Ma. Theresa narrated everything to Virginia, how and when the appellant sexually assaulted her. Ma. Theresa confided to her mother that the appellant had been raping her since 1990, and that the last time she was raped was on August 3, 1996. Virginia was afraid that if they all left the house, they might be killed by the appellant. Thus, she instructed her daughter to go to school as usual and to meet her in the street corner after class if she and her sister could leave the house; otherwise, Virginia told Ma. Theresa, she would send somebody to fetch them. Virginia forthwith left the house. Ma. Theresa and Sheila could not leave because the appellant ordered Ma. Theresa to cook rice, and Shiela to catch fish at the *pretil*. Unknown to Ma. Theresa, her mother had already told their neighbors what the appellant had done to her daughter. Ma. Theresa was surprised when their neighbors, including Mang Araboy, arrived at their house armed with bolos and empty pails, pretending to gather *kangkong* near the house of the appellant. Momentarily, the appellant arrived and greeted the visitors. He was shocked when one of the visitors grabbed him by the neck and demanded to know: "*Is it true that you molested your daughter*?" The appellant tried to disengage himself and enter the house, but failed when the same visitor boxed him. The neighbors then brought Ma. Theresa to the *barangay* hall where she met her mother. The rape incidents were reported to the police authorities on August

Supreme Court E-Library

7, 1996. On the same day, Ma. Theresa gave her sworn statement to the police investigator.

Dr. Ma. Lorraine de Guzman, an obstetrician-gynecologist, conducted a physical examination on Ma. Theresa. In her medical report, Dr. de Guzman disclosed her findings, stating in part:

> External Genitalia: no pubic hair noted, labia majora and minora are not yet prominent, no discharge noted.
>
> Internal Examination: Cervix — admits 1 finger with ease, 2 fingers with difficulty, multiple hymenal lacerations with old shallow healed laceration at 12, 2, 5, 8, 9, 10, 11:00 o'clock position, no discharge noted, Uterus small, Adnexae — negative.
>
> PREGNANCY TEST — NEGATIVE. Gram. Staining-negative [of the [presence] of spermatozoa.[7]

The Evidence of the Appellant

The appellant denied having raped Ma. Theresa. He avers that it was his son Benjamin, Jr. who had consensual sexual relations with Ma. Theresa. He testified that he was married to Mercedes Estabillo by whom he had two children, Benjamin Medina, Jr. who was born in 1980 and Arlene Medina, who was born in 1983. However, Mercedes married another man. The children lived with their mother in General Natividad, Nueva Ecija.

The appellant met Virginia and they started living together as husband and wife in March 1990. They had a turbulent life together. She was the jealous type and they quarreled often. Virginia actually suspected that the appellant and her daughter had an amorous relationship. She even told Ma. Theresa that perhaps Ma. Theresa wanted to take her place as the live-in partner of the appellant.

In 1992, Alfredo Medina, the appellant's father, moved in with the appellant and his second family. Alfredo helped the couple reap *palay* and looked after the children as well. The

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[7] Exhibit "A", Records, p. 27.

Supreme Court E-Library

appellant's children and Virginia's daughters got acquainted with each other. Ma. Theresa and Arlene (the appellant's daughter) studied in the same school. Benjamin, Jr. was a frequent visitor in their house in Sta. Arcadia. When he stayed the night, he slept with Ma. Theresa, Shiela and his grandfather in one room. He treated the girls like his own sisters.

In 1994, Benjamin, Jr. stayed in his father's house for about a year. In the month of November, the appellant saw his son and Ma. Theresa, having sexual intercourse in the farm. Ma. Theresa was barely ten years old then. The appellant knew it was immoral, but he kept silent about the incident because he did not want to have problems with Virginia. In June of 1996, Benjamin, Jr. came for a visit and stayed for two nights. The appellant again saw his son and Ma. Theresa having sexual intercourse. When he talked to Benjamin, Jr., the latter said that he liked Ma. Theresa. The appellant kept the matter to himself.

In the evening of August 6, 1996, the appellant and Virginia had a violent quarrel. He told her that he was leaving her. Virginia was enraged. She then instigated her young daughter Ma. Theresa to charge him with rape, to get back at him for wanting to leave her.

In due course, the trial court rendered judgment finding the appellant guilty of four counts of rape. The dispositive portion of the trial court's decision reads:

WHEREFORE, the Court finds the accused BENJAMIN MEDINA *y* PALANCIO guilty beyond reasonable doubt of the crimes of rape and hereby sentences him to suffer the penalty of:

1. Life imprisonment in Criminal Case No. 7099 and to indemnify the offended party in the amount of ₱50,000.00 as moral and exemplary damages;

2. Death in Criminal Case No. 7100 and to indemnify the offended party in the amount of ₱50,000.00 as moral and exemplary damages;

3. Death in Criminal Case No. 7101 and to indemnify the offended party in the amount of ₱50,000.00 as moral and exemplary damages; and

Supreme Court E-Library

4. Death in Criminal Case No. 7062 and to indemnify the offended party in the amount of ₱50,000.00 as moral and exemplary damages.

SO ORDERED.[8]

In his appeal brief, the appellant assails the decision of the trial court, contending that:

1. THE TRIAL COURT SHOWED BIAS AND PARTIALITY THEREBY DEPRIVING THE ACCUSED-APPELLANT TO A FAIR AND IMPARTIAL TRIAL WHEN THE PRESIDING JUDGE ACTIVELY PARTICIPATED IN THE EXAMINATION OF COMPLAINING WITNESS AND THAT OF DRA. MA. LORRAINE DE GUZMAN BY ASKING LEADING QUESTIONS AND ON CROSS EXAMINATION OF THE ACCUSED.
2. THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF COMPLAINING WITNESS IN VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED-APPELLANT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM.[9]

On the contention of the appellant that he was denied his constitutional right to a fair and impartial trial, he argues that the trial judge exhibited bias and partiality in favor of the prosecution when he propounded leading questions to Dr. Ma. Lorraine de Guzman requiring hearsay testimony. The judge allegedly asked questions on matters pertaining to his defense even before the prosecution rested its case. The Office of the Solicitor General, for its part, contends that the questions propounded by the judge to the witness for the prosecution were meant merely to expedite the proceedings and to clarify events subject of her testimony. Besides, the counsel of the appellant never interposed any objections to the questions of the trial court, and even cross-examined the said witness on those matters.

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[8] Records, p. 103.

[9] *Rollo*, p. 142.

Supreme Court E-Library

The Court agrees with the Office of the Solicitor General.

The trial judge in this jurisdiction are judges of both the law and the facts. The judge has the right, nay the duty, to ask questions to elicit relevant facts and to make the records bear the truth. He is not a mere figurehead or an umpire in a trial and it is his duty to see that justice is done. He cannot be expected to remain always passive and stoic during the proceedings.[10] Being the arbiter, the judge may properly intervene in the presentation of evidence to expedite the progress of the trial and prevent unnecessary waste of time.[11]

The trial judge may even be considered negligent in the performance of his duties if he permits a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material facts upon which the judgment in the case should turn.[12] In an effort to ascertain the truth, a judge may examine or cross-examine a witness by leading questions. He may even seek to draw out relevant and material testimony though that testimony may tend to support or rebut the position taken by one or the other party.[13] Questions designed to clarify points and to elicit additional relevant evidence are not improper.

The extent to which the trial judge may intervene in the presentation of evidence must largely be a matter of discretion, to be determined by the circumstances of each particular case.[14] But the interrogatory must be such as not to intimate or express an opinion as to the truth of the case or the merits of the contentions of either of the parties. An intimation of opinion by question is as repugnant as a direct statement of opinion.[15]

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[10] *People v. Basquez*, 366 SCRA 154 (2001).

[11] *Consep v. People*, 290 SCRA 378 (1998), cited in *People v. Basquez, supra.*

[12] *United States v. Hudieres*, 27 Phil. 45 (1914).

[13] *People v. Adora*, 275 SCRA 441 (1997).

[14] *People v. Bernstein*, 95 N.E. 50 (1911).

[15] *Murphy v. State*, 79 S.E. 228 (1913).

Supreme Court E-Library

The judge must remember that he is as much judge on behalf of the accused whose liberty is in jeopardy, as he is judge in behalf of the State for the purpose of safeguarding the interest of a society.[16]

In this case, the appellant asserts that the trial judge propounded leading questions requiring hearsay evidence to Dr. de Guzman, which in some way, helped the prosecution build its theory of the case. The questions objected to by the appellant and the answers to said questions read:

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Wait Fiscal, question from the Court.

Q What did the victim tells [*sic*] you?
A She told me that she was raped, Your Honor, on August 3, 1996 at around 12:00 p.m. and also when the patient was only 6 years old, she was first molested by the accused, sir.

Q Did she tells [*sic*] you more or less how many times has she been raped or molested?
A She did not tell me how many times but she told me that she was raped for [*sic*] several times, Your Honor.

Q Did she tells [*sic*] you who raped her?
A Yes, sir, she told me she was raped by his step father [*sic*].

Q Based on that, you conducted an examination?
A Yes, sir.[17]

The questions propounded to the doctor by the trial court judge which the appellant avers as aiding the prosecution read:

Fiscal Macaraig:

q Dr., in cases where there were several or multiple old healed lacerations and there was an allegation on the latest incident of rape, is it still possible that a new laceration pertaining to the latest incident or rape be found if there were already multiple old healed lacerations?

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[16] *Ibid.*

[17] TSN, September 18, 1996, pp. 7-8.

Supreme Court E-Library

Witness:

a Yes, sir.

q How about in this particular patient which allegedly there was, that the latest incident was August 3, 1996, was there any findings of anew [*sic*] laceration regarding this latest incident?

a None, sir.

Court:

q Is it also possible that there will be no new lacerations because there were already old lacerations?

a Yes, sir.

q That is possible because in the laceration you found almost all the numbers of the clock where old lacerations were found almost. The Court will reform the question. In this particular case there are already six (6) old lacerations and it is possible that there be no more new laceration?

a It is also possible that there will be new laceration[s] if the object penetrated [*sic*] is big enough or if there is force or if there is instrumentation, there can be new laceration be found. [*sic*]

Court:

q But it can also be possible that there will be no laceration?

Witness:

a Yes, sir, because the patient is no longer a virgin, sir.[18]

On the other hand, the questions propounded by the trial judge, which the appellant believes were intended to demolish the factual basis for his defense even before the prosecution rested its case, are as follows:

Court:

q In 1990 don't you have any other male companions or house male [*sic*] in your house aside from Benjamin Medina?

a None, sir.

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[18] TSN, September 19, 1996, pp. 7-8 (Dr. de Guzman).

Supreme Court E-Library

q In 1994 don't you have any male companion in your house aside from Benjamin Medina?
a None, sir.

q In August, 1996 do you have any male companion in your house aside from Benjamin Medina?
a None, sir.

q Of your own knowledge, has Benjamin Medina a son that ever visited you or caused in sleeping in your house [*sic*]?
a None, sir.[19]

The Court believes that the questions propounded by the trial judge to Dr. de Guzman were proper, the purpose of which was only to clarify certain aspects of the testimony of the doctor in relation to the examination of the private complainant and her report thereon[20] and not really to help the prosecution build its case against the appellant.

The questions of the trial judge do not call for hearsay evidence. The purpose of the trial judge in propounding questions to the doctor was to elicit informations relayed to her by the private complainant as the bases for the physical examination and not to prove the truth of the said informations. In other words, the questions call for independently relevant statements.[21]

The appellant cannot now argue that he was prejudiced by the questions of the trial judge on Dr. de Guzman. The counsel of the appellant did not register a whimper of protest to the questions of the trial judge. The records show that the appellant, through counsel, even cross-examined the doctor on the private complainant's answers regarding her (private complainant's) medical history. The doctor stated that it was her duty to take down the medical history of the private complainant preparatory to and in the course of her examination. The doctor even confirmed on cross-examination her answers to the questions

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[19] TSN, September 19, 1996, p. 14 (Ma. Theresa Salvatierra).

[20] Exhibit "A".

[21] FRANCISCO, *THE REVISED RULES OF COURT OF THE PHILIPPINES*, 1997 ed., Vol. VII, Part I, pp. 518-519.

Supreme Court E-Library

of the trial court that no less than the private complainant had informed her that she had been raped by the appellant several times:

Atty. Adriano:

q And when the Court asked you a question that it may be longer than that your answer is yes. Will you please tell us how long?
a We can not exactly tell how long, sir, because it it [*sic*] is already healed.

q Now, in your examination in chief, you made mentioned [*sic*] that the victim indicted [*sic*] to you that she has been raped several times by the accused and you stated Madam Witness just a while ago that you found the victim was so shy and timid and did not answer unless she did not give information unless asked. How come that this witness acco[r]ding to you narrated that she was raped several times at several occasion?

Witness:

a Because I asked the victim, I asked about the history before I conducted my physical examination, sir.

q So you mean to say Madam Witness that before you conducted physical examination you first interviewed the patient and including in that interview was the fact that you asked her if she was raped for so many times?
a Yes, sir.

q By the way, do you remember how many incidents like this have you conducted your examination?
a This is my third case, sir.

q And during the first case did you ask the victim whether she was raped for several times?
a Yes, sir.

q And that is true also with your second case you also asked the victim if she was raped for several times?
a Yes, sir.

q Why is that your standard operating procedure before you actually conduct your examination?
a Yes, sir, it is in our book.

Supreme Court E-Library

q And how about the history that you are telling, is it not a fact that the information that you got came not directly from the mouth of the victim but from her companions?

Fiscal Macaraig:

Your honor we will object, because he is already bothering the witness.

Court:

Answer the question.

Witness:

a It came from the victim herself, sir.[22]

Neither can the appellant contend that the questions of the trial judge pertaining to the absence of new lacerations in the private complainant's hymen were improper. By his questions, the trial judge merely wanted to know how it was possible for the private complainant to have been raped on August 3, 1996 and yet when she was examined on August 7, 1996, no fresh lacerations were found in her hymen. It bears stressing that the prosecution presented the doctor as an expert witness. The trial judge had the right to require the doctor to give her expert opinion upon the matter subject of her testimony and in relation to her report on her examination of the private complainant.[23] The opinion of the doctor was important, although not conclusive on the trial judge in the resolution of the primordial issue before him — whether or not the private complainant was raped on August 3, 1996 two times as claimed by her on direct examination.

The appellant cannot likewise fault the trial judge for asking the private complainant if aside from the appellant, there was another male residing in the house. There is no evidence on record that when the trial judge asked the said questions, he already knew the defenses yet to be established by the appellant after the prosecution had rested its case.

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[22] TSN, September 19, 1996, pp. 4-6 (Dr. de Guzman).

[23] *State v. Cole*, 109 So. 505 (1926).

Supreme Court E-Library

The appellant's claim that the trial judge was biased in favor of the prosecution is belied by his own admission during trial that the judge exerted every effort to have his witnesses brought to the court for them to testify for the appellant:

Court:

q Whom do you want the Court to excercise [*sic*] power so that she or he will testify in your favor?
a I do not know the names of the operators of the rotavator who worked the rice field, sir.

q Are there other witnesses aside from them?
a Roger Semasio, sir.

q I am telling you that Roger Semasio received a subpoena from this Court and he res[c]ued to come, what will he testify?
a We work with Roger Semasio and he will testify regarding the character of my wife, sir.

q Can Roger Semasio could [*sic*] tell anything that you did not molest your step-daughter?
a None that I know who can testify in my favor, sir. Because my name has already been destroyed in our place, sir.

q So, you do not have any other witnesses?
a No more, sir.

q Alright, you state all what you want to tell to the Court now?
a In the creek where the complainant claimed that I raped her is not true, sir.

q What else?
a Because if the creek dries up several persons used to go there and it is impossible for me to have sexual intercourse with the complainant, sir.

q What else?
a From the place where we used to live, the creek is clearly seen, sir.

q What more?
a I felt that my wife had influenced her daughter to tell [a] lie, sir. All the given dates and time that I raped her are not true. I never rape [*sic*] her, sir.

Supreme Court E-Library

Atty. Adriano:

> *Coming from the very mouth of the accused, your honor, that he has no witnesses to testify in his favor and notwithstanding the effort of this Honorable Court to have certain persons to testify in his favor, these persons failed to appear despite receipt of the subpoena from this Court.* After the witness testified by himself and considering that the defense has no other witness to present the defense respectfully rests its case, your honor.[24]

On the second assignment of errors, the appellant avers that he was deprived of his right to be informed of the charges against him in Criminal Cases Nos. 7099 and 7100, because the complaints filed in the said cases did not state the precise dates when the crimes were committed by the appellant. He contends that the complaints are defective because the same merely allege that the crimes were committed in 1990 and 1994. The appellant asserts that if the precise date of the commission of the crime in Criminal Case No. 7099 was properly alleged in the complaint, he would have been able to prove that it would have been impossible for him to have raped the private complainant in the creek during dry season because people would usually go to the creek during this time. He would not have dared rape the victim with people within the vicinity of the creek. He further claims that he could not have raped the private complainant on August 3, 1996 because when the latter was examined by Dr. de Guzman on August 7, 1996, the doctor found no fresh lacerations in the hymen of the private complainant. Moreover, the prosecution failed to prove that he used force or intimidation in raping the victim on the said date. The trial court erred in not giving credence and probative weight to his testimony that it was his son, Benjamin Medina, Jr. who had raped the victim.

The contentions of the appellant are bereft of merit.

Section 11, Rule 110 of the Revised Rules of Criminal Procedure reads:

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[24] TSN, October 9, 1996, p. 15 (Italics supplied).

Supreme Court E-Library

Sec. 11. Date of commission of the offense. — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (11a).

The precise date of the commission of rape is not an essential element of said crime. Failure to specify the exact dates when the rapes were committed does not render the complaints defective. Allegations in the Complaints in Criminal Cases Nos. 7099 and 7100 that the crimes charged were committed in 1990 and 1994 are sufficient compliance with the requirements of the said rule. Indeed, in *People v. Lizada*,[25] this Court ruled:

Failure to specify the exact dates or time when the rapes occurred does not *ipso facto* make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed "*before and until October 15, 1994,*" "*sometime in the year 1991 and the days thereafter,*" "*sometime in November 1995 and some occasions prior and/or subsequent thereto*" and "*on or about and sometime in the year 1988*" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules of Criminal Procedure.

In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed, "*sometime during the month of March 1996 or thereabout,*" "*sometime during the month of April 1996 or thereabout,*" "*sometime during the month of May 1996 or thereabout*" substantially apprised appellant of the crimes he was charged with since all the elements of rape were stated in the informations. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant's assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on.

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[25] G.R. No. 143468-71, January 24, 2003.

Supreme Court E-Library

Significantly, the appellant did not even bother filing in the court *a quo* a motion for a bill of particulars under Rule 116, Section 9 of the Revised Rules of Criminal Procedure before arraignment. The appellant was duly arraigned with the assistance of counsel under the Informations and entered his plea of not guilty to the charges. The appellant was able to cross-examine the witnesses for the prosecution. He even adduced evidence to prove his defenses after the prosecution had rested its case. Indeed, the appellant testified that it was his son Benjamin Medina, Jr. who had consensual sexual intercourse with the private complainant and that the charges lodged against him are but concoctions of his common-law wife Virginia. He also averred that it was impossible for him to have raped the private complainant in the creek.[26] It was only on appeal that the appellant alleged for the first time that the criminal complaints were defective. The Court believes that the appellant's assertion is but an afterthought.

The lack of fresh lacerations in the hymen of the private complainant when she was examined by the doctor on August 7, 1996 does not negate the commission of the rape on August 3, 1996. Case law has it that a freshly lacerated hymen is not an essential element of rape.[27] Mere touching, no matter slight of the *labia* or lips of the female organ by the male genital even without rapture or laceration of the hymen is sufficient to consummate rape.[28] Besides, Dr. de Guzman testified that there could be no new or fresh lacerations on the hymen of the private complainant after she was raped on August 3, 1996 because she was no longer a virgin as of the said date:

Fiscal Macaraig:

q Dr., in cases where there were several or multiple old healed lacerations and there was an allegation on the latest incident of rape, is it still possible that a new laceration pertaining to

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[26] See note 25.

[27] *People v. Bernabe*, 370 SCRA 142 (2001).

[28] *People v. Oliva*, 282 SCRA 470 (1997).

Supreme Court E-Library

the latest incident or rape be found if there were already multiple old healed lacerations?

Witness:

a Yes, sir.

q How about in this particular patient which allegedly there was, that the latest incident was August 3, 1996, was there any findings of anew [*sic*] laceration regarding this latest incident?

a None, sir.

Court:

q Is it also possible that there will be no new lacerations because there were already old lacerations?

a Yes, sir.

q That is possible because in the laceration you found almost all the numbers of the clock where old lacerations were found almost. The Court will reform the question. In this particular case there are already six (6) old lacerations and it is possible that there be no more new lacerations?

a It is also possible that there will be new lacerations if the object penetrated [*sic*] is big enough or if there is force or if there is instrumentation, there can be new laceration [*sic*] be found.

Court:

q But it can also be possible that there will be no laceration?

Witness:

a Yes, sir, because the patient is no longer a virgin, sir.

Fiscal Macaraig:

Q So in other words, let's just clarify this point, Dr., if the patient was ravished repeatedly and for a long expand [*sic*] of time and considering the patient was no longer a virgin and when an object aside from the penis was being inserted at the private part, there will be no new laceration being found on it?

A Yes, sir.[29]

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[29] TSN, September 19, 1996, pp. 7-8.

Supreme Court E-Library

Contrary to the claim of the appellant, the prosecution proved beyond cavil, through the testimony of the private complainant, that the appellant succeeded in raping her on August 3, 1996 by means of threats, force and intimidation:

q And while living there together with the accused, was there any unusual incident that occurred in the month of August, 1996 specifically August 3, 1996?
a There was, sir.

q And will you please state what is that particular unusual incident?
a He again ordered my sister on an errand to buy cigarette for him, sir.

q And was your sister able to comply with this order to ran [*sic*] an errand?
a Yes, sir.

q And where was the accused when he asked your sister to go for an errand?
a He was at our house, sir.

q How about you, where were you on that particular time?
a I was also in our house, sir.

q How about your mother, is [*sic*] your mother also inside your house on that particular moment of time?
a She was not at home, sir.

q By the way, where is your mother at that particular pointing [*sic*] time?
a My mother went in [*sic*] buying fish so that she can sell the same, sir.

q Now after your sister ran errand, aside from you and your father, were there any other person in the house?
a None, sir.

q So in other words, at that time, it is only yourself and Benjamin Medina who was [*sic*] at home?
a Yes, sir.

q And at that time what happened while Benjamin Medina and yourself were alone inside the house?

Supreme Court E-Library

a I was then at the kitchen and he then left the bedroom and *went towards me then grabbed me at the arms.*

q And then what happened afterwards?
a *I was again forcibly pulled towards the wooden bed, sir.*

q And while you were then being forcibly pulled towards the wooden bed, what happened afterwards?
a *I was then struggling, he held my hands and sandwitched [sic] my legs.*

q How was he able to sandwitch [*sic*] your legs?
a He lie [*sic*] on it, sir.

q And then at this particular pointing [*sic*] time, were you still struggling?
a Yes, sir.

q And what happened later on?
a He again removed my clothes, sir.

q What happened after he was able to removed [sic] your clothes?
a He again inserted his private parts to mine, sir.

q And again I would like to ask you will you please state in what manner was the accused able to insert his private parts to yours at this third incident?
a He forcibly inserted the same, sir.

q And will you please tell us how do you feel at this pointing [*sic*] time that he was forcibly inserted [*sic*] his private parts to yours?
a It hurts, sir.[30]

x x x x x x x x x

Fiscal Macaraig:

q Now, at the time Benjamin forcibly entered your private parts, for how long did he stay on top of yours?
a For several minutes, sir.

q And what happened afterwards?
a After that he again dressed himself, sir.

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[30] TSN, September 19, 1996, pp. 12-14 (Italics supplied).

Supreme Court E-Library

q While he was committing this act against you, was there anything that he told you?
a There was, sir.

q And will you please state what did he tell you at that time he was doing this particular dastardly act against you?
a He told me that after the harvest in our place he will bring me in Mindoro, sir.

q Aside from this, was there anything that was told by Benjamin Medina to you?
a There was, sir.

q What was that?
a *I must not commit mistake in reporting the matter to my mother, sir.*

q And what else aside from that, was the accused able to say anything if ever you will tell or report this matter to your mother?
a *According to him if I ever told or reported the matter to my mother, my mother, my sister and me will be killed, sir.*

x x x x x x x x x

Court:

Make it on record that it was only at the first and two questions that the complainant seems to be afraid but later on, in the fourth and fifth questions she has been testifying intelligently and spontaneously.

Fiscal Macaraig:

q Now, will you please state what is the time of the date when this third incident happened?
a It was more or less 12:00 o'clock noontime, sir.

q Now on the same day after this third incident, was there again any unusual incident that occurred in relation to your stepfather and to yourself?
a There was, sir.

q And will you please state what is that unusual incident that occurred subsequent to the incident that occurred on the same day of August 3, 1996?
a It was in the evening, sir.

Supreme Court E-Library

q And what is that unusual incident that occurred on the evening of the same date?
a While we were then sleeping together with my sister, I was awaken[ed] when somebody rose up and when I look[ed] it was my stepfather, sir.

q And what happened afterwards?
a He was then walking towards our room, sir, and when I rose up and then he grabbed and pulled me towards the other wooden bed.

q And when he grabbed and pulled you towards the other wooden bed what happened afterwards?
a He again undressed me, sir.

q And what happened afterwards?
a He again lie [*sic*] on top of me, sir.

q At this time that he repeated the same act what was your reaction?
a I resisted and struggled but I can not fight because he was much stronger than me, sir.

q While he was forcibly pulling you towards the wooden bed and again lie on top of you what happened afterwards?
a He again forcibly inserted his private parts into mine, sir.

q And when he was doing this to you how did you feel?
a It hurts, sir.

q And aside from feeling hurts [sic] what other feeling did you or have you encountered [sic] during that occasion?
a I became so afraid, sir.[31]

In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot

[31] *Id.*, at 14-16.

Supreme Court E-Library

be allowed to draw strength from the weakness of evidence of the defense.[32] Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of the complainant's testimony.[33] The trial court gave credence and full probative weight to the foregoing testimony of the private complainant as it aptly observed, thus:

> The Court has carefully perused the testimonies of the complainant and found that the same were related in all candor and sincerity; the testimonies of Maria Theresa Salvatierra are credible and, therefore, sufficient to sustain a verdict of conviction; her straightforward narration of the rape incidents that occurred before, during and after the rapes were consistent, unwavering and, therefore, obvious proof of the veracity of her declaration.[34]

The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[35]

There is nothing in the records that would impel this Court to deviate from the said findings and conclusion of the trial court. Indeed, the private complainant testified in a categorical, straightforward and consistent manner. Her testimony, bearing badges of truth, is sufficient to establish the appellant's guilt for the crimes charged.[36]

In contrast, the appellant's bare denial of the crimes charged is inherently weak. It cannot prevail over the positive, candid

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[32] *People v. Quiñanola*, 306 SCRA 710 (1999).

[33] *People v. Turco*, 337 SCRA 714 (2000).

[34] Records, p. 102.

[35] *People v. Yaoto*, 370 SCRA 275 (2001).

[36] *People v. Lim*, G.R. No. 128289, April 23, 2002.

Supreme Court E-Library

and categorical testimony of the private complainant, whose credibility was upheld by the trial court. Between the positive declarations of the prosecution witnesses and the negative statements of the appellant, the former deserves more credence.[37] Denials must be buttressed by strong evidence of non-culpability.[38] There is none in the case at bar.

The appellant's claim that Virginia fabricated the rape charges because of jealousy and to get back at him for wanting to leave her is flimsy and fanciful. An act of desperation is the appellant's insistence that the lacerations on the hymen of the private complainant were caused by her sexual relations with his son Benjamin Medina, Jr. A young girl on the verge of womanhood would not concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble and inconvenience, not to mention the trauma of a public trial, unless she was in fact raped.[39] Further, it is unnatural for a mother to use her offspring as an instrument of malice, even for the purpose of avenging a personal slight, especially if it will subject her daughter to the embarrassment and stigma attendant to a rape trial.[40] The appellant has failed to show any ill or dubious motive on the part of the private complainant and her mother to impute such grave crimes upon him. The revelation of the private complainant could have been borne only by her desire to obtain justice for the wrongs committed by the appellant against her.[41] If indeed Benjamin Medina, Jr. had consensual sexual intercourse with the private complainant, he could have testified to bolster his father's defense. However, despite the subpoenae *ad testificandum* served upon him, he refused to testify for the appellant.

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[37] *People v. Morfi*, G.R. No. 145449-50, August 1, 2002.

[38] *Ibid.*

[39] *People v. Jaquilmac*, G.R. No. 139787, September 17, 2002.

[40] *Ibid.*

[41] *People v. Reyes*, G.R. No. 140642-46, August 7, 2002.

Supreme Court E-Library

The Proper Penalties for the Felonies

When the appellant raped the private complainant in 1990, the prescribed penalty for the crime under Article 335 of the Revised Penal Code was *reclusion perpetua*.

The proper penalty imposable on the appellant in Criminal Case No. 7099 is *reclusion perpetua*, not life imprisonment. It bears reiterating that *reclusion perpetua* and life imprisonment are not synonymous penalties. They are distinct in nature, in duration and in accessory penalties.[42] The Court distinguished the two penalties in this wise:

> The Code (Revised Penal Code) does not prescribe the penalty of "life imprisonment" for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the . . . Code but by the special law. *Reclusion perpetua* entails imprisonment for at least (30) years, after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, *etc.* It is not the same as "life imprisonment" which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration,[43]

The penalty imposed by the trial court on the appellant in Criminal Case No. 7099 shall thus be modified accordingly.

On the other hand, when the appellant raped the private complainant some time in 1994, and twice on August 3, 1996, Article 335 of the Revised Penal Code had already been amended by Republic Act No. 7659, the law which re-imposed the death penalty for certain heinous crimes. Article 335, as amended by Section 11 of Rep. Act No. 7659, provides in part:

x x x x x x x x x

> The death penalty shall be imposed if the crime of rape is committed with any of the following attendant circumstances:

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[42] *People v. Ricafranca*, 323 SCRA 652 (2000).

[43] *People v. Nang*, 289 SCRA 16 (1998).

Supreme Court E-Library

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x x

While the Court affirms the trial court's finding that the appellant is likewise guilty beyond reasonable doubt of each count of rape in Criminal Cases Nos. 7100, 7101 and 7062, it finds that the trial court erred in imposing the death penalty on the appellant for the said crimes. To warrant the imposition of the death penalty, the minority of the victim and her relationship with the accused must be both alleged and proved.[44]

Although the minority of the private complainant had been established by the prosecution, her relationship to the appellant was not alleged and proved concurrently. The complaints in Criminal Cases Nos. 7100, 7101 and 7062 uniformly allege that the appellant is the "stepfather" of the private complainant. However, this allegation was not proven during the trial, as the evidence adduced therein shows that the appellant is merely the common-law spouse of Virginia, the mother of the private complainant. Virginia and the appellant were never legally married to each other; hence, the appellant could not be considered the private complainant's "stepfather." On the other hand, while it was indeed proven that the appellant was the common-law husband of the victim's mother, the same was not alleged in the criminal complaints. Given the discrepancy between the allegation of the nature of the relationship between the appellant and the victim in the criminal complaints and what was proven during the trial, the appellant can only be found guilty of simple rape. Consequently, the penalties imposed in Criminal Cases Nos. 7100, 7101 and 7062 shall be reduced to *reclusion perpetua* for each count of simple rape.

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[44] *People v. Sistoso*, G.R. Nos. 131867-68, July 31, 2002; *People v. Victor*, G.R. No. 127904, December 5, 2001.

Supreme Court E-Library

The Civil Liabilities of the Appellant

Likewise, a modification of the damages awarded in favor of Ma. Theresa is in order. The amount of ₱50,000 awarded by the trial court as "moral and exemplary damages" for each count is insufficient. Under prevailing jurisprudence, when the commission of rape is not qualified by any of the circumstances under which the death penalty is to be imposed, the victim shall be awarded civil indemnity in the amount of ₱50,000.[45] Civil indemnity is separate and distinct from moral damages. In this case, the private complainant shall be awarded ₱50,000 as civil indemnity for each count of rape. In addition, the award of ₱50,000 as moral damages for each count is warranted, as the same is awarded in rape cases without need of pleading or proof for it is assumed that the victim has suffered moral injuries entitling her to such an award.[46] Lastly, the appellant should be made to pay exemplary damages in the amount of ₱25,000 for each count, to deter others similarly minded from sexually abusing the children of their common-law spouses.[47]

WHEREFORE, the Decision dated October 23, 1996, of the Regional Trial Court of Cabanatuan City, Branch 27, in Criminal Cases Nos. 7062, 7099, 7100 and 7101 is *AFFIRMED* with *MODIFICATIONS*. Appellant Benjamin Medina, Sr. *y* Palancio is found guilty beyond reasonable doubt of four counts of simple rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count. He is, likewise, ordered to pay private complainant Ma. Theresa Salvatierra, the amounts of ₱50,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages for each of the four counts of rape.

SO ORDERED.

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[45] *People vs. Ucab*, G.R. No. 133227, October 10, 2002.

[46] *Ibid.*

[47] *Id.*

Supreme Court E-Library

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, and *Azcuna, JJ.*, concur.

Austria-Martinez, J., on leave.

EN BANC

[G.R. Nos. 131926 & 138991. June 18, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MICHAEL U. PAGALASAN** *alias* **"Mike," RONNIE CABALO** *alias* **"Romy", ALADIN CABALO, FERDINAND CORTEZ, a JOHN DOE identified only as FERNANDO, and a PETER DOE identified only as "Bong,"** *accused*, **MICHAEL U. PAGALASAN** *alias* **"Mike,"** *appellant.*

SYNOPSIS

Appellant was convicted of two counts of kidnapping for ransom. He was sentenced to double death and hence, this automatic review.

Appellant and his co-accused wrongfully entered the house of the Lims and dragged George and his son Christopher out of their bedroom into the victim's car. They drove out of the house and cruised along the highway. Later, the police were able to rescue George, while Christopher remained in the company of the other kidnappers. Christopher was rescued several days after. The Court ruled that appellant, in conspiracy with his cohorts, was guilty of kidnapping Christopher and slight illegal detention of George. The death penalty imposed for the crime of kidnapping, however, was not proper as the motive of extortion of ransom was not established. The death penalty was reduced to *reclusion perpetua*.